

1 **UNITED STATES DISTRICT COURT**
2 **FOR THE**
3 **WESTERN DISTRICT OF PENNSYLVANIA**

4 SHANE HIBBS,)

5 Plaintiff)

6 v.)

7 VERDE ENERGY USA, INC.,)

8 Defendant)
9 _____

Case No.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

10
11 **COMPLAINT**

12 SHANE HIBBS (“Plaintiff”), by and through his attorneys, KIMMEL &
13 SILVERMAN, P.C., alleges the following against VERDE ENERGY USA, INC.
14 (“Defendant”):

15
16 **INTRODUCTION**

17 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection
18 Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

19
20 **JURISDICTION AND VENUE**

21 2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See
22 Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

23 3. Defendant conducts business in the Commonwealth of Pennsylvania
24 and as such, personal jurisdiction is established.
25

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2 **PARTIES**

3 5. Plaintiff is a natural person residing Pittsburgh, Pennsylvania 15214.

4 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

5 7. Defendant is a corporation that has its office located in Norwalk,
6
7 Connecticut 06851.

8 8. Defendant is a “person” as that term is defined by 47 U.S.C.
9 §153(39).

10 9. Defendant acted through its agents, employees, officers, members,
11
12 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
13 representatives, and insurers.

14 **FACTUAL ALLEGATIONS**

15
16 10. Plaintiff has a cellular telephone number that he has had for more
17 than one year.

18 11. Plaintiff has only used this number as a cellular telephone number.

19 12. The phone number has been assigned to a cellular telephone service
20
21 for which Plaintiff incurs a charge for incoming calls.

22 13. Plaintiff never provided permission to Defendant to call his cellular
23 telephone number or to contact him regarding any goods or services offered by
24 Defendant.
25

1 14. Beginning in September 2014, and continuing through November
2 2014, Defendant called Plaintiff on his cellular telephone.

3 15. When contacting Plaintiff on his cellular telephone, Defendant used an
4 automatic telephone dialing system and automatic and/or pre-recorded messages.
5

6 16. Defendant's messages would state its name and that its call was "for
7 marketing purposes."

8 17. Defendant's telephone calls were not made for "emergency purposes."
9

10 18. For example, Defendant called Plaintiff on: September 5, 2014, at
11 7:10 p.m.; and October 29, 2014, at 11:00 a.m.

12 **DEFENDANT VIOLATED THE**
13 **TELEPHONE CONSUMER PROTECTION ACT**

14 19. Plaintiff incorporates the forgoing paragraphs as though the same were
15 set forth at length herein.

16 20. Defendant initiated multiple automated telephone calls to Plaintiff's
17 cellular telephone using a prerecorded voice.
18

19 21. Defendant initiated these automated calls to Plaintiff using an
20 automatic telephone dialing system.
21

22 22. Defendant's calls to Plaintiff were not made for emergency purposes.
23

24 23. Defendant's calls to Plaintiff, in and after September 2014, were not
25 made with Plaintiff's prior express consent.

1 24. Defendant's acts as described above were done with malicious,
2 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
3 under the law and with the purpose of harassing Plaintiff.

4 25. The acts and/or omissions of Defendant were done unfairly,
5 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
6 lawful right, legal defense, legal justification or legal excuse.

7 26. As a result of the above violations of the TCPA, Plaintiff has suffered
8 the losses and damages as set forth above entitling Plaintiff to an award of
9 statutory, actual and trebles damages.
10

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, SHANE HIBBS, respectfully prays for a judgment
14 as follows:
15

- 16 a. All actual damages suffered pursuant to 47 U.S.C. §
17 227(b)(3)(A);
18 b. Statutory damages of \$500.00 per violative telephone call
19 pursuant to 47 U.S.C. § 227(b)(3)(B);
20 c. Treble damages of \$1,500 per violative telephone call pursuant
21 to 47 U.S.C. §227(b)(3);
22 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
23 e. Any other relief deemed appropriate by this Honorable Court.
24
25

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, SHANE HIBBS, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

DATED: April 3, 2015

KIMMEL & SILVERMAN, P.C.

By: s/ Craig Thor Kimmel
CRAIG THOR KIMMEL
Attorney ID # 57100
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888
Fax: (877) 788-2864
Email: kimmel@creditlaw.com